matter, has *locus standi,* and is entitled to impeach the two orders made by the magistrate's court.

The order made by the magistrate's court under section 63(4) of the Ordinance was made on the certificate of the chief building surveyor which was not in accordance with the requirements of section 63(4) The magistrate's court had therefore no power to make the order which it did. The magistrate clearly acted in excess of jurisdiction and the order made was therefore invalid, of no effect and a complete nullity. Consequently the second order made under section 63(5) which was based on the first order, was also a nullity and so was the statutory notice which followed the second order. As the respondent company had a direct and substantial interest in the matter and the two orders made by the magistrate's court were a nullity, the respondent company clearly had *locus standi* to challenge the said orders because when an order or a decision is a nullity advantage of it can be taken by any person having a legitimate interest in the matter. This is clear from the observations of Lord Upjohn in *Durayappah's* case, at page 300 ([1967] 3 W.L.R.).

Even if the two orders made by the magistrate's court were not a nullity but were merely voidable it is our view that the respondent company had *locus standi* to impeach them. It is true that the first order made by the magistrate's court on 4th October, 1967 was clearly an order made against the owner of the building as it was addressed to him and therefore was voidable only at the instance of the owner. But there was the second order made on the 30th October, 1967 which though not addressed to any named person was an order made against all the occupants of the building, including the respondent company, because it prohibited the building from being used for human habitation. This order was served on the respondent company and the chief building surveyor by serving the statutory notice under section 106(14) of the Ordinance on the respondent company calling upon it to vacate the building, was seeking to enforce this second order. And the respondent company was legally bound to obey the second order. In our opinion the certificate of the chief building surveyor, the two orders made by the magistrate's court and the statutory notice, must all be considered together because they were part and parcel of the same transaction. They cannot be separated or considered in isolation for purposes of *locus standi* because they are essential prerequisites to the obtaining of vacant possession of the building by the chief building surveyor. In our opinion the respondent company had not only a substantial interest in impugning the two orders but also *locus standi* within the meaning of *Durayappah's* case, because as already stated, the order prohibiting the building from being used for human habitation was an order made against it and enforceable against it.

The respondent company was the lawful tenant of the ground floor of the building and its tenancy was protected by the Control of Rent Ordinance. Its legal rights were undoubtedly infringed by the making of the two orders by the magistrate's court because in the event of the building being demolished, which was a possibility which could not be ruled out, the respondent company would be deprived of a legal right, namely, the right to enjoy the use of the ground floor of the building and to remain in possession thereof unfettered and without interference. In our opinion, whether the two orders made by the magistrate's court were a nullity or merely voidable the respondent company had the right and the *locus standi* to apply for the quashing of the two orders.

For these reasons, we hold that the two orders made by the magistrate's court were rightly quashed by the High Court. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier.*

EE YEE HUA v. PUBLIC PROSECUTOR

[R.Cr.J. (Winslow J.) May 23, 1969]

[Singapore — Criminal Revision No. 2 of 1969]

Criminal Law and Procedure — Revision — Withdrawal of charge by the Deputy Public Prosecutor — Offence not triable by magistrate — Whether magistrate can make an order of discharge amounting to acquittal — Whether complainant can be granted audience at hearing of petition for revision — Criminal Procedure Code (Cap. 132), ss. 311 and 312.

In this case a complaint was laid by the petitioner before a magstrate in respect of an offence under section 323 of the Penal Code and after the matter had been referred to the police for investigation, the magistrate issued a summons against one Fong Kei Kwong under section 325 of the Penal Code, which according to Schedule C of the Criminal Procedure Code is not triable by a magistrate. When the case came up for mention before a magistrate, the deputy public prosecutor informed the court that the prosecution had instructions to withdraw the charge. The learned magistrate discharged the accused, the discharge amounting to an acquittal. The petitioner thereupon applied to the court for revision of the summons. A preliminary question was raised as to whether a complainant such as the petitioner should be granted audience at the hearing of the petition for revision in the exercise of the court's discretion.

Held: (1) in the circumstance of this case the court would exercise its discretion to hear the complainant or his counsel on his behalf and counsel for the complainant should be given permission to represent the complainant on the revision;

(2) the learned magistrate in this case had no jurisdiction to try the offence under section 325 of the Penal Code and therefore had no power to acquit;

(3) as there had been a glaring excess of jurisdiction in this case the court would exercise its power of revision by altering the order of the magistrate and expunging the words "amounting to an acquittal".

Cases referred to:—

(1) *Srimati Shailabala Devi* v. *Emperor* (1933), 34 Cr. L.J. 1117.

(2) *Raj Kumar Paul* v *Amar Chand Das & Ors.* [1962] 1 Cr. L.J. 679.

(3) *Bisheshar & Ors.* v. *R.* A.I.R. 1949 All. 214.

(4) *Muhammad Ali* v. *The Crown* (1950), 51 Cr. L.J. 1343/44.

(5) *Public Prosecutor* v. *Mat Zain* [1948-49] M.L.J. Supp. 142.

(6) *Koh Teck Chai* v. *Public Prosecutor* [1968] 1 M.L.J. 166.

(7) *Mary Shim* v. *Public Prosecutor* [1962] M.L.J. 132.

(8) *Public Prosecutor* v. *Nik Soh* [1956] M.L.J. 97.

(9) *Goh Tong* v. *Public Prosecutor* [1953] M.L.J. 252.

(10) *Ng Yan Pee* v. *Public Prosecutor* (1959), 3 M.C. 249.

(11) *Khanu & Ors.* v, *Emperor* (1924), 25 Cr. L.J. 1368-1370.

(12) *Krishna Reddi* v. *Subbamma* I.L.R. 24 Mad. 136.

(13) *R.* v. *Comptroller-General of Patents* [1899] 1 Q.B. 913.

(14) *Re Soo Leot* [1956] M.L.J. 55.

(15) *R.* v. *Lachiram* I.L.R. 18 Bom. 333.

(16) *Emperor* v. *Laxmi Prasad & Ors.* (1940), 41 Cr. L.J. 921.

(17) *Damodar* v. *Jujharsingh & Anor.* (1925), 26 Cr. L.J. 1349.

CRIMINAL REVISION.

Dato' David Marshall for the petitioner.

K.S. Rajah (Deputy Public Prosecutor) for the respondent.

N. Ganesan for the accused.

Winslow J.: This petition for revision has been preferred by one, Ee Yee Hua, who was the complainant in respect of an offence under section 323 of the Penal Code which he alleged in his complaint before the fourth magistrate, Singapore on 30th May, 1968 had been committed by an officer of the Corrupt Practices Investigation Bureau who, according to him, had assaulted him on 28th May, 1968. As a result of investigations which the magistrate caused to be made into the matter, he finally decided on 29th January, 1969 to issue a summons against one Fong Kei Kwong under section 325 of the Penal Code. It should be observed that, according to the Schedule to the Criminal Procedure Code, an offence under section 323 is triable by a magistrate whereas an offence under section 325 is triable by a district judge.

The summons was duly served on the said Fong Kei Kwong and came on for mention before the Ninth Magistrate on 6th March, 1969 when the Deputy Public Prosecutor informed the court that the prosecution had instructions to withdraw the summons and the court discharged the accused, such discharge amounting to an acquittal.

The petitioner accordingly prays that the order of discharge amounting to an acquittal may be reversed or annulled or varied on the ground that the Ninth Magistrate erred in law in granting a discharge amounting to an acquittal as he had no jurisdiction to acquit in respect of a charge under section 325 and could at most discharge him not amounting to an acquittal.

Mr. David Marshall appeared at the hearing of the petition for the petitioner and Mr. K.S. Rajah, Deputy Public Prosecutor, on behalf of the Public Prosecutor.

Mr. Marshall very properly drew my attention to a preliminary question as to whether a complainant such as the petitioner should be granted audience at the hearing of the petition for revision in the exercise of the court's discretion since section 312 of the Criminal Procedure Code does not confer any right to be heard either personally or by an advocate on any party when the High Court is asked to exercise its powers of revision. The proviso to the same section empowers the court, if it thinks fit, to hear any party in such circumstances. It was conceded by Mr. Marshall that the parties to the summons before the magistrate were the State and the accused.

Mr. Rajah, on the other hand, whilst recognising that the court has a discretion to hear a stranger on revision, contended that the circumstances of each particular case should control the exercise of the court's discretion.

I indicated to counsel that I would give my decision on the preliminary question after hearing submissions on the petition and that in the meantime Mr. Marshall could continue to address the court at least in the capacity of an *amicus curiae.*

I will now attempt to dispose of this preliminary issue before dealing with the petition itself.

Sulaiman C.J. in *Srimati Sailabala Devi* v. *Emperor* [1] held that a party to a proceeding would include the accused, the Crown or the complainant. He went on to say:—

"As interference in a criminal revision is discretionary, the High Court is not absolutely bound even to hear the accused or complainant much less his counsel. But it has always been the invariable practice in all courts to hear them and their counsel, if ready."

It seems to me that the complainant in this case was not a complete stranger with regard to whom Sulaiman C.J. further held:—

"My answer to the first question, therefore, is that an application filed by a third party, who is a total stranger to the proceedings and had no *locus standi* to invoke the jurisdiction of the court is merely one for bringing the matter to the knowledge of the court; and that in such a proceeding, his counsel should not expect to be heard."

Mr. Rajah went on further to contend that as an appeal against a magistrate's order of acquittal could only be preferred by the Public Prosecutor and no one else, the court should not hear the complainant.

In two Indian cases, however, which were drawn to my attention, the court held that the Criminal Procedure Code did not prevent a complainant from invoking the revisionary jurisdiction of the High Court. (See *Raj Kumar Paul* v. *Amar Chand Das & Ors.*[2] and *Bisheshar & Ors.* v. *R.*[3]). In the latter case, the court went further to hold that the complainant could be heard in support of his application for revision.

Mr. Marshall also cited a number of other Indian cases where the courts permitted counsel to appear on behalf of complainants in applications for revision against acquittal.

When this petition was originally submitted to me by the Registrar for directions, I was aware that the petitioner was represented by the firm of David Marshall, advocates and solicitors, and I directed that a date should be fixed for argument in open court, that all parties, including the person acquitted, and the complainant as well as the Public Prosecutor and counsel representing the various parties, should be present. In short, I had already decided to entertain the application for revision since it raised a question of some importance affecting the jurisdiction of the magistrates' courts.

We all know that where a private person makes a report at a police station of a non-seizable offence such as assault or causing hurt, it is the invariable practice for officers in charge of police stations to refer such a complainant to a magistrate's court. In this particular case, the complainant was so referred and the Fourth Magistrate, after causing investigations to be made and after ascertaining the identity of the person against whom the complaint was made, decided on the materials before him that an offence of voluntarily causing grievous hurt under section 325 of the Penal Code was disclosed against one Fong Kei Kwong and he accordingly issued a summons against the accused in this case.

Had the case been mentioned on 6th March, 1969 before the Fourth Magistrate, perhaps that would have been an end of the matter because the Fourth Magistrate was himself a district judge. It, however, went before the Ninth Magistrate who was not.

As Shabir Ahmad J. in *Muhammad Ali* v. *The Crown*[4] said:—

"In cases where the order of acquittal is passed by a court not having jurisdiction or is based on an incomplete record of evidence, or is against any provision of law, no difficulty arises because in such cases the order of acquittal can be set aside and a re-trial ordered without any prejudice being caused to the accused person. In cases where the order of acquittal is passed by a court of competent jurisdiction and in which the entire evidence of the prosecution has been recorded, the High Court should be reluctant to order a re-trial in revision, because such an order means practically a direction to the subordinate court to which the case is sent, to convict though, because of the absence of an appeal under section 417, Criminal Procedure Code, the High Court itself would not be competent to alter the acquittal into conviction."

It should be noted that section 439 of the Indian Criminal Procedure Code which is substantially the same as our section 311 goes one step further than our law and specifically provides that where an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. Moreover, in Singapore it is only the Public Prosecutor who has the power to present an appeal against acquittal whereas in India, by virtue of their section 417(3), a private complainant may, after obtaining special leave to appeal from an order of acquittal, present such an appeal to the High Court.

In the present case, the complainant was not in the happy position in which his counterpart in India would have been and there was nothing he could do in the matter except to invoke the revisionary jurisdiction of this court. He could certainly not have expected the Public Prosecutor to present an appeal against the acquittal because it was the Public Prosecutor himself who withdrew the charge against the accused and even went further to ask for the order of discharge against the accused to be one amounting to an acquittal. This was therefore eminently a case for the exercise of my discretion to hear the complainant or his counsel on his behalf. I am reinforced in this view by the fuller arguments on the preliminary question and the number of Indian and other authorities cited in support of the proposition that the complainant in this case should be permitted to be heard either in person or by his counsel. I therefore hold on the preliminary question that

Mr. Marshall should be regarded as having been given permision *ab initio* to represent the complainant on this revision and not merely as *amicus curiae*.

I now turn to a consideration of the petition itself.

Mr. K.S. Rajah, on behalf of the Public Prosecutor, submitted vigorously that a magistrate has power to acquit a person arraigned even on a murder charge if the prosecution withdraws. I should have thought that this proposition is so obviously wrong that it has only to be stated to be rejected in view of the clear provisions of Chapter XVII of the Criminal Procedure Code relating to preliminary inquiries into cases triable by the High Court. In such cases a magistrate can only commit an accused person for trial by the High Court or if he finds that there are insufficient grounds for committing him, discharge him unless he finds that the offence actually disclosed by the evidence is one which he himself or a district court can try summarily.

Mr. Rajah then proceeded to cite a number of Malaysian cases where the High Court has held that where the charge is withdrawn by the prosecution, the discharge of the accused should amount to an acquittal unless good cause is otherwise shown. A careful examination of these particular cases has not satisfied me that the courts did not intend their observations to apply only to cases falling within the jurisdiction of the relevant court before which the withdrawal is made. I do not think Callow J. in *Public Prosecutor* v. *Mat Zain* [5] meant otherwise. In the case under reference he clearly said that although the magistrate concerned had discharged an accused not amounting to an acquittal, he, Callow J., did not know the reason for this or the nature of the charge preferred. I do not think that this authority assists the Public Prosecutor.

The next case cited was that of *Koh Teck Chai* v. *Public Prosecutor*.[6] It is not clear from the reported judgment of Ong Hock Sim J. in Penang what the nature of the charge was in respect of which the magistrate made an order of discharge not amounting to an acquittal. In that case the prosecuting officer gave as his reasons for the withdrawal that a civilian witness was still untraced and that it was intended probably to proceed against the accused by way of departmental action. Reading between the lines one can surmise that the learned magistrate was dealing with an offence which was within his jurisdiction to try but the case seems to have proceeded to appeal on the ground that the learned magistrate wrongly held that he had no power under the Code to discharge the accused amounting to an acquittal *without a trial*.

As against these cases Mr. Marshall referred to *Mary Shim* v. *Public Prosecutor* [7] and *Public Prosecutor* v. *Nik Soh*.[8] In the former, Mary Shim was charged with an offence punishable under section 314 of the Penal Code (causing death of a woman by an act intended to cause miscarriage) which was clearly triable by the High Court and the magistrate at the preliminary inquiry discharged her not amounting to an acquittal. A second preliminary inquiry was later held and the case eventually went to the High Court resulting in her conviction for that offence. The Court of Appeal sitting in Kuala Lumpur stated, *inter alia*, that in relation to the earlier magistrate's order discharging the accused not amounting to an acquittal:—

> "It is perhaps as well to observe that the words 'not amounting to acquittal' were surplusage as the magistrate had no power to acquit."

In the latter case, Rigby J. held that the learned magistrate concerned had no jurisdiction to try a case which, on the face of the charge preferred, revealed that the respondent had either lied in the course of a police investigation or perjured himself at the subsequent trial. On the face of this charge it was clear that if the magistrate had found that the respondent had perjured himself at the trial he would then have found himself in the position of deciding that he had no jurisdiction to try the case because it involved a maximum punishment of 7 years imprisonment. It should be noted that perjury under section 193 of the Penal Code is triable by the district court.

After a careful consideration of the authorities on the subject, I have come to the conclusion that an offence triable by a district court to the exclusion of a magistrate's court is beyond the criminal jurisdiction of a magistrate's court to try. What I have to consider is what order a magistrate's court can properly make when a case involving an offence falling within the jurisdiction of a higher court to try is brought before it as a court of first mention with a view to its being transferred to the appropriate court but the prosecution withdraws.

An offence under section 325 of the Penal Code i.e., voluntarily causing grievous hurt, is punishable with a maximum term of imprisonment of 7 years and it is clear from section 10 and Schedule A to the Criminal Procedure Code that such an offence is only triable by a district court besides the High Court. Section 11 provides that where under section 10 an offence is triable by a district court but not a magistrate's court, the Public Prosecutor may, in writing,

authorise a magistrate's court to try such an offence. It has not been suggested that the Public Prosecutor has given any such authority to the Ninth Magistrate's Court in the present case.

For the purposes of this petition it does not appear to be necessary for me to pursue in detail the fine distinctions which were sought to be made for different purposes of the Criminal Procedure Code between expressions such as "commencement of trial", "commencement of prosecution", "commencement of proceedings" and "at any stage of a summary trial".

In *Goh Tong* v. *Public Prosecutor* [9] Mathew C.J. held that in the phrase "commencement of the trial" for the purposes of section 399 of the Malayan Criminal Procedure Code (our section 424), the word "commencement" necessarily means "commencement of the contentious phase" but that for purposes of section 173 (our section 172), the phrase does not occur, "but for the purposes of that section the trial begins with the framing of the charge which means, in practice, the approval by the court of the draft charge entered beforehand by the prosecution."

Section 175(1), under which the prosecution acted in the current case, provides that the Public Prosecutor may at any stage of any summary trial:—

". . . . inform the court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on such charge against the defendant shall be stayed and he shall be discharged from and of the same."

In the present case there is little doubt that the prosecution had commenced when the Fourth Magistrate took cognizance of an offence under section 325 of the Penal Code. (See *Ng Yan Pee* v. *Public Prosecutor* [10]). In issuing his summons under section 325 to be accused person in this case the trial can be said to have begun for the purposes of section 172 because as Mathew C.J. said in *Goh Tong's* case, to which I have earlier referred, the trial begins with the framing of the charge. The court was not merely approving a draft charge entered beforehand by the prosecution but was in fact preferring a charge framed by itself. I am therefore of opinion that for the purposes of section 175 of the Criminal Procedure Code the trial had begun on the appearance before the Ninth Magistrate of the accused on 6th March, 1969 in answer to the summons issued by the Fourth Magistrate containing the charge as originally framed by him.

If the learned Deputy Public Prosecutor had not stood up and indicated that the prosecution was withdrawing the charge, I have no doubt that the charge woud have been read out to the accused with a view to the court's recording his plea. If he had pleaded guilty of course then an interesting position would have arisen in the absence of the Public Prosecutor's written authority conferring power on the magistrate's court under section 11 of the Criminal Procedure Code to try the case. I am not, however, concerned with that kind of a situation but I do not think that the failure on the part of the prosecution to wait for his plea to be recorded was any bar to the Public Prosecutor's application to withdraw the charge under section 175(1) for the reason I have already stated although it is desirable that, for the removal of doubt, the normal practice of recording a plea of "not guilty" first should be followed.

In this connection it may be interesting to refer to the Indian case of *Khanu & Ors.* v. *Emperor.*[11] In that case, the court held that after certain persons were charged before a magistrate under sections 424 and 506 of the Penal Code, which the magistrate had jurisdiction to try, and after they were acquitted, the complainant made several applications to the same magistrate to frame a charge against the accused under section 395 of the same Code for gang robbery and to commit them for trial. The magistrate declined to entertain the applications although he placed them on record. The Sind Judicial Commissioner's Court held that in declining to commit the case for trial the magistrate really discharged the accused although he passed no formal written order to that effect. The court then went on to refer to a passage from the Full Bench case of *Krishna Reddi* v. *Subbamma,*[12] where the Full Bench held:—

"From the terms of the magistrate's order it is clear that he adjudicated upon the question whether there was any evidence against the accused in respect of the major offence. The magistrate came to the conclusion that there was not and he declined to charge him with the major offence. It seems to us that this is a 'discharge' within the meaning of section 209."

The Indian section 209 corresponds to our section 139.

Applying the analogy of the Sind case to what occurred in the Ninth Magistrate's court, it could be said that the magistrate had power to discharge the accused if he had grounds for believing that the charge was groundless. That reason was presented to him in the form of the Public Prosecutor's indication that he did not intend to prosecute the defendant further upon the charge as framed.

It is undoubtedly true that the Public Prosecutor has power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence other than proceedings before a court martial, etc. By *Gazette* Notification No. S 244/61 Deputy Public Pro-

secutors are empowered to enter a *nolle prosequi* at any stage of a summary trial. In England the position is that proceedings pending in any court may be stayed by an entry of *nolle prosequi* at any time after the bill of indictment is signed and before judgment. This power of the Public Prosecutor to stay proceedings is not subject to any control by the courts and the prosecution so stayed may be revived on a fresh indictment since a *nolle prosequi* does not operate as a bar or discharge or an acquittal on the merits.

In the exercise of his discretion the Public Prosecutor performs high judicial functions. He is pre-eminent in this field and is not subject to any control. (See *R.* v. *Comptroller-General of Patents* [13]).

In indicating to the Ninth Magistrate that the prosecution had instructions to withdraw the summons, the Deputy Public Prosecutor was in effect entering a *nolle prosequi* under the powers already conferred on him and his instructions presumably came from the Public Prosecutor who as I have said, performs high judicial functions. Although I know nothing of the merits of this case so far as the facts are concerned, beyond the bare complaint of the complainant that he had been assaulted, I must accept it as a fact that the Public Prosecutor addressed his mind judicially to the materials before him and decided in favour of a stay of proceedings. With the exercise of his discretion no court can interfere.

The only question is whether the Deputy Public Prosecutor should have gone further than this, to ask for a discharge amounting to an acquittal, not before a district judge but, before a magistrate who had no jurisdiction in the matter at all to acquit. He of course, had power to discharge without ordering an acquittal as he undoubtedly has in cases before him during a preliminary inquiry. That power to acquit of an offence triable by a district court is not vested in a magistrate.

The question which now remains for me to decide is whether this is a proper case in which I should exercise my powers of revision as prayed by the complainant. It has been held by eminent judges that revisionary powers, which are discretionary, must be exercised with regard to all the circumstances of each particular case which vary greatly from case to case. (See the judgment of Buhagiar J. in *Re Soo Leot* [14] citing from Jenkins C.J. in *R.* v. *Lachiram* [15]).

In some Indian cases, of which *Muhammad Ali's* case to which I have referred earlier is one, and *Emperor* v. *Laxmi Prasad & Ors.* [16] and *Damodar* v. *Jujharsingh & Anor.* [17] are others, it has been observed that the High Court should exercise its revisionary powers, particularly in cases of applications by private persons against orders of acquittal, sparingly or with some reluctance and that any interference should ordinarily be limited to cases where there is a radical and incurable irregularity or a complete disregard of the law and procedure or a manifest injustice which has got to be cured or where the order of acquittal is passed by a court not having jurisdiction or where interference is urgently demanded in the interests of public justice. In *Damodar's* case cited earlier Mr. Wadegaonker A.J.C. held that the "application is simply to serve personal ends and not to secure administration of justice and I am, therefore, not prepared to entertain it."

It would be difficult to discharge with these propositions and it seems to me that, for the purposes of the present petition for revision, I have to ask myself whether the present application is simply to serve personal ends or whether there has been such an excess of jurisdiction on the part of the Ninth Magistrate or a grave miscarriage of justice that this court ought to interfere in the public interest.

It has not been suggested nor is there anything on the record before me to indicate any personal desire on the part of the complainant to wreak vengeance on or to victimise the accused. It is, of course, inconceivable that this court should consider whether the Public Prosecutor has exercised his discretion as he should for that is, as I have stated, beyond the court's control.

In the ordinary way, therefore, I would not feel justified in exercising my powers of revision. There is, however, a glaring excess of jurisdiction on the part of all concerned, except the complainant, in the resulting order of discharge amounting to an acquittal which the Ninth Magistrate made. Mr. Marshall submitted to me that I should regard the order made as an order of acquittal and that I should order the accused to be re-tried before a district court. I do not however feel disposed to order a re-trial because, in my opinion, the order is one of discharge amounting to an acquittal and is not an order of acquittal *simpliciter*, and never could have been, except before a district court after it had heard evidence. It is an order incorporating two concepts. The magistrate undoubtedly had power to discharge even though he had no power to acquit. I propose therefore to treat this as an appeal from any other order under section 299(d) of the Criminal Procedure

Code in which case I can exercise my powers of revision under section 311 thereof by altering such order, as I now do, by expunging the words "amounting to an acquittal".

I therefore certify to the Ninth Magistrate's Court that its order of discharge amounting to an acquittal should be altered to one of discharge only.

Order accordingly.

Solicitors: *David Marshall; Osborne-Jones & Co.*

KARAM SINGH v. MENTERI HAL EHWAL DALAM NEGERI*, MALAYSIA

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya), Suffian, Gill and Ali F.JJ.) April 25, 1969]

[Kuala Lumpur — Federal Court Criminal Appeal No. X.26 of 1968]

Internal Security — Detention — Grounds of — Right to be informed of allegation of facts on which order is based — Purpose of detention — Application for habeas corpus — Legality of detention — Onus of proof — Order of detention stating 3 grounds in alternative, while grounds supplied to detainee stated only 1 — Argument that allegations of fact were vague, insufficient and irrelevant — Internal Security Act, 1960, s. 8(1) — Malaysia Constitution, art. 5(1).

Constitutional Law — Fundamental rights — Preventive detention — Legality of detention — Onus Malaysia Constitution, arts. 5, 40, 149, 151 & 162.

Criminal Law and Procedure — Habeas corpus — Person detained under Internal Security Act, 1960 — Exercise of valid legal power — Criminal Procedure Code (Cap. 6), Ch. XXXVI.

This was an appeal against the decision of the High Court dismissing an application by the appellant for a writ of *habeas corpus*. The appellant had been detained under an order of detention made by the Minister of Home Affairs which recited that "Whereas the Yang di-Pertuan Agong is satisfied with respect to the undermentioned person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia/maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the following order:". The grounds of detention served on the appellant stated that the order was made on the ground that the appellant had acted in a manner prejudicial to the security of Malaysia; therein set out were twelve allegations of fact on which the order was based. The learned trial judge held that the order of detention was made in exercise of a valid power and that the detainee had not discharged the burden, which was on him, of showing that the order was made *mala fide* or improperly. On appeal it was argued that: (i) the learned trial judge had failed to recognise the nature and extent of the onus placed on the respondent by the Constitution to prove the legality of the detention and was wrong in holding that there was an onus on the appellant to discharge; (ii) section 8 of the Internal Security Act allows a person to be detained on four grounds, the order of detention stated three grounds in the alternative, the grounds supplied to the appellant stated only one ground, and all this showed a casual and cavalier attitude on the part of the responsible authorities indicating that they had not given the matter adequate consideration, and therefore the order of detention was invalid and the appellant's detention unlawful; (iii) the allegations of fact supplied to the appellant were vague, insufficient and irrelevant and thus hampered the appellant in the exercise of his right to make representations, consequently invalidating the original order of detention.

Held, dismissing the appeal: (1) the learned trial judge was correct in holding that the appellant's detention had been made in the exercise of a valid legal power and therefore the onus lay on the appellant to show that such power had been exercised *mala fide* or improperly;

(2) the defect (if any) in the detention order in setting out the objects and purposes of the detention in the alternative was a defect of form only and not of substance, it did not show that the executive had not adequately applied its mind to the desirability of detaining the appellant and therefore did not invalidate the order;

(3) the vagueness, insufficiency or irrelevance of the allegations of fact supplied to the appellant did not relate back to the order of detention and could not render unlawful detention under a valid order of detention; if, however, the appellant thought that the allegations were vague, insufficient or irrelevant he should have asked for particulars;

(4) the question whether there was reasonable cause to detain the appellant was a matter of opinion and policy, a decision which could only be taken by the executive.

Cases referred to:—

(1) *State of Bombay* v. *Atma Ram* A.I.R. 1951 S.C. 157.

(2) *Jagannath Misra* v. *State of Orissa* A.I.R. 1966 S.C. 1140.

(3) *Greene* v. *Secretary of State for Home Affairs* [1942] A.C. 284.

(4) *Ram Manohar* v. *State of Bihar* A.I.R. 1966 S.C. 740.

(5) *Dwarka Das* v. *State of Jammu & Kashmir* A.I.R. 1957 S.C. 164.

(6) *Shibban Lal* v. *State of U.P.* A.I.R. 1954 S.C. 179.

(7) *Lawrence Joachim Joseph D'Souza* v. *State of Bombay* [1956] S.C.R. 382.

(8) *Jhala Jorubha* v. *The State* A.I.R. 1952 Saurashtra E.C. 12, 16.

(9) *Bhim Sen* v. *State of Punjab* [1952] S.C.R. 19, 23.

(10) *Sadanandan* v. *State of Kerala* A.I.R. 1966 S.C. 1925.

(11) *The King* v. *Secretary of State for Home Affairs, Ex parte Lees* [1941] 1 K.B. 72.

(12) *Liversidge* v. *Sir John Anderson & Anor.* [1942] A.C. 206.

(13) *Eliezer Zabrovsky* v. *General Officer Commanding Palestine* [1947] A.C. 246, 255.

(14) *Dr. Ram Krishan Bhardwaj* v. *State of Delhi* A.I.R. 1953 S.C. 318.

(15) *Rameshwar Shaw* v. *District Magistrate, Burdwan & Anor.* A.I.R. 1964 S.C. 334.

(16) *Rex* v. *Halliday* [1917] A.C. 260.

(17) *Gopalan* v. *State of Madras* A.I.R. 1950 S.C. 27; [1950] S.C.R. 88.

(18) *Machindar Shivaji Mahar* v. *The King* [1949-50] F.C.R. 827, 831.

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